

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re G.S. et al., Persons
Coming Under the Juvenile
Court Law.

B288833

(Los Angeles County
Super. Ct. Nos.
17CCJP00801,
17CCJP00801A,
17CCJP00801B)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Stephen C. Marpet, Juvenile Court Referee. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Veronica Randazzo, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

T.R. (mother) appeals from a juvenile dependency court order finding jurisdiction over her two children, G.S. and K.S., under Welfare and Institutions Code, section 300.¹ She also appeals from a dispositional order requiring her to participate in individual counseling and a parenting education course. We find that substantial evidence supports the court's orders, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 16, 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a referral regarding five-year-old G.S. and two-year-old K.S. The children's father, R.S. (father), had forced his way into mother's home because he thought another man was there. The children were asleep at the time. Father searched the apartment, but did not find anyone else. He sat on the couch and began to smoke from a pipe; mother thought he was smoking methamphetamine. Mother threatened to call 911. Father pushed mother against a wall, told her he would give her a real reason to call 911, and tried to hit her. Father left the apartment, mother called 911, and father was arrested.

When a social worker visited mother's home on September 22, 2017, she was packing the family's belongings and preparing

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

to move. Mother reported that she and the children were moving to a new home so father would not know where they lived. Mother said she was afraid of father.

Father did not live in the home with mother and the children, and he had been struggling with drug addiction for about nine years. Mother said there was ongoing domestic violence with father. When K.S. was about six months old, father punched mother in the mouth and caused her to bleed; G.S. witnessed the incident and began to cry. In February 2017, father attempted to punch mother in the face; she was able to block the punch. Mother ran to the bathroom and locked herself in, but father broke the door open and choked mother by grabbing her by the throat. G.S. saw this and began to cry. Mother reported the incident to police.

Mother said ongoing domestic violence included father pulling her hair, punching her in the face, and pushing her around. She said these incidents occurred in the presence of the children. Father would also call mother stupid and worthless. A previous DCFS referral had been generated in April 2015, when a reporting party stated that father pushed mother down in front of G.S., while mother was pregnant with K.S. DCFS was unable to follow up with either mother or father, so the allegations were deemed inconclusive.

Mother said five-year-old G.S. had some behavioral issues, including hitting two-year-old K.S. and being aggressive toward K.S. Mother believed G.S.'s behavior problems resulted from G.S. witnessing domestic violence between mother and father. Mother thought G.S. needed professional help for these issues.

The detention report noted that a family law court had entered a temporary restraining order against father on

September 18, 2017. The order included the children as additional protected persons. Father had called mother 40 to 45 times from jail and after he was released. Mother reported to the social worker that father stalks her and waits for her in her apartment complex.

The social worker noted that the home did not appear to have any safety hazards. K.S. was in the home at the time; she did not have any marks or bruises, and appeared to be healthy and developmentally on track.

The social worker interviewed G.S. at her school. G.S. denied that she had been abused or neglected. She said she had witnessed father call mother names, threaten mother, and tell mother not to call police. G.S. also said she had seen father punch mother in the face and pull her hair, and G.S. said she would cry because she was scared. G.S. said that father does not discipline her, but she was afraid of father because he hits mother. School personnel said that G.S. had a great attendance record and no behavioral issues. Mother had provided the school with a copy of the restraining order.

On September 29, 2017, a social worker visited mother's home again. Mother said father had come to the home earlier that week and left a note under the door. The social worker discussed with mother the importance of calling police when father violated the restraining order. Mother agreed to cooperate with DCFS and the court, and was willing to enroll in parenting classes.

DCFS recommended that the children be detained from father and remain in mother's care as long as she participated in counseling. Father was homeless, and his whereabouts were

unknown. DCFS deemed the family to be at high risk for future abuse.

On October 3, 2017, DCFS filed a juvenile dependency petition under section 300. Counts a-1 and b-1 alleged that father engaged in domestic violence incidents in 2015 and in February, April, and September 2017, in the presence of G.S. or both children. Counts a-1 and b-1 also alleged that “mother failed to protect the children in that mother knew of the father’s violent conduct and allowed the father to have unlimited contact with the children.” Counts a-1 and b-1 also stated, “The violent conduct by the father and the mother’s failure to protect the children endanger the children’s physical health and safety and place the children at risk of serious physical harm.”

Count b-2 alleged that father had a history of illicit drug abuse that rendered him incapable of caring for the children. Count b-2 also alleged that mother failed to protect the children in that she allowed father to have unlimited contact with the children despite his drug use. Count b-2 alleged that father’s drug use and mother’s failure to protect the children endangered their physical health and safety, and placed the children at risk of serious physical harm.

At the detention hearings on October 4 and 6, 2017, the court found a prima facie case for detaining the children from father. The court ordered that the children remain with mother under the supervision of DCFS.

A jurisdiction/disposition report dated October 30, 2017 stated that mother and the children were living in a new home. G.S. confirmed that she had witnessed several instances of domestic violence involving father hitting mother. G.S. also told the social worker that father used to follow mother and the

children when they walked down the street and when they went into stores. G.S. knew that they had moved so that father would not know where they lived, and mother told G.S. that if she sees father, she should not reveal their new address.

Mother confirmed that father followed her and the children, and she said the reports of violence were true. She said the domestic violence had been occurring for three to four years, and she had not contacted law enforcement about it on most occasions. Mother said that during one violent incident, G.S. screamed and ran to hold mother as father choked mother; father backed off. Mother reiterated that father had harassed, stalked , and threatened to kill her. DCFS recommended that mother receive family maintenance services, including parenting education, a domestic violence victims program, and individual/family counseling.

A last-minute information filed before the January 3, 2018 hearing stated that the DCFS social worker met with father in November 2017. Father admitted the pattern of domestic violence and said that the children were often present as it occurred. Father also admitted that he had followed mother on multiple occasions. Father also said that he was a methamphetamine user and he admitted to smoking it inside the home with the children present. Father said he wanted to reunify with the children. DCFS recommended enhancement services for father including drug and alcohol testing, parenting education, a domestic violence program, and counseling. At the adjudication hearing on January 3, 2018, father was served with the temporary restraining order. The court continued the adjudication hearing to March 14, 2018.

A last-minute information filed March 12, 2018 stated that mother was participating in a domestic violence education program and individual therapy. Father had not visited the children and was a no-show for his drug tests.

At the adjudication hearing on March 14, 2018, DCFS requested that the petition be sustained as alleged. Mother's counsel argued that mother should be stricken from the petition because she had taken steps to protect the children. Mother's counsel argued that mother had moved to a new home to protect the children, and the children had not been at risk since the case was opened in October 2017. Counsel for the children joined mother's request.

The juvenile court held that mother's recent progress did not nullify the family's history, and there was ample evidence to support the petition as to mother. The court therefore sustained the petition under section 300, subdivisions (a) and (b). It ordered that the children remain released to mother, and ordered mother to complete a domestic violence support group program for victims, parenting education, individual counseling, and family preservation. Mother appealed the jurisdictional and dispositional orders.

DISCUSSION

A. Justiciability

Mother challenges only the court's findings as to her; father has not appealed. Mother acknowledges that this position potentially renders the appeal moot, because jurisdiction over the children arising from father's conduct has not been challenged. "Because the juvenile court assumes jurisdiction of the child, not the parents, jurisdiction may exist based on the conduct of one parent only. In those situations an appellate court need not

consider jurisdictional findings based on the other parent's conduct. [Citation.] Nevertheless, we may exercise our discretion to reach the merits of the other parent's jurisdictional challenge in three situations: (1) the jurisdictional finding serves as the basis for dispositional orders that are also challenged on appeal; (2) the findings could be prejudicial to the appellant or could impact the current or any future dependency proceedings; and (3) the finding could have consequences for the appellant beyond jurisdiction." (*In re J.C.* (2014) 233 Cal.App.4th 1, 3-4; see also *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

Mother asks that we exercise our discretion to consider the merits of her appeal, asserting that the jurisdictional finding could be prejudicial to her in a future dependency action or in family court. (See *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 762.) Mother asserts that the jurisdictional finding "resulted in allegations of child abuse being sustained against her," and the allegations "labeled mother as a child abuser." In addition, mother asserts that the court's jurisdictional findings served as the basis for its dispositional order requiring mother to participate in certain services, and mother challenges "whether some of those programs were reasonably necessary to eliminate the reason for the court's involvement."

DCFS asserts that mother's appeal fails to present a justiciable issue and should be dismissed. It points out that the jurisdictional finding did not label mother as a child abuser, and the juvenile court had the authority to order mother to participate in programs even without a finding of jurisdiction as to mother. (See, e.g., *In re D.M.* (2015) 242 Cal.App.4th 634, 639 ["a dispositional order may reach both parents, including a nonoffending parent."].) DCFS also states that no relief can be

granted, as the children will remain under the jurisdiction of the juvenile court.

Mother's assertion that the juvenile court found her to be a "child abuser" is incorrect. The petition clearly stated that father was the aggressor, and mother failed to protect the children. Nevertheless, because there is a pending family law case and it is possible that the jurisdictional findings could impact that action, we exercise our discretion to consider the merits of mother's appeal.

B. Jurisdiction

Mother asserts that the juvenile court erred in finding a basis for jurisdiction. "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (In re I.J. (2013) 56 Cal.4th 766, 773.)

Mother contends that although G.S. witnessed the physical violence between mother and father, G.S. "was never physically involved in the incidents." Mother asserts that although G.S. had behavioral problems relating to the violence, neither child had marks or bruises, and there was simply no evidence that the children themselves were at risk from the domestic violence between mother and father.²

²Mother does not separately challenge the jurisdictional findings under section 300, subdivision (a) and (b), but instead

“[T]he application of section 300, subdivision (a) is appropriate when, through exposure to a parent’s domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599 (*Giovanni F.*)). Similarly, “Physical violence between a child’s parents may support the exercise of jurisdiction under [section 300,] subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.)

Here, the evidence showed that the domestic violence and father’s drug abuse occurred in many separate instances over a period of three to four years. There were multiple instances in which father hit and choked mother, and pulled her hair. He bloodied mother’s face, left bruises, stalked mother, and threatened to kill her. Mother and father maintained this relationship despite the violence occurring over a period of three or four years, and had a second child (K.S.) in that time period. Mother did not contact law enforcement or seek other assistance until the end of the relationship, even though she recognized that G.S. was having behavioral issues as a result of witnessing the violence. G.S. not only witnessed these altercations, but on one occasion when father was choking mother, G.S. ran to mother and held her. A child inserting herself into a violent incident unquestionably places the child at risk of being injured as a result of the domestic violence. (See, e.g., *In re M.M.* (2015) 240 Cal.App.4th 703, 720 [engaging in domestic violence in close

asserts that there was insufficient evidence to support the finding that the children were at risk of harm.

proximity to a child supports a jurisdictional finding under section 300, subd. (a)].)

This was not a situation like that in *In re Daisy H.*, *supra*, 192 Cal.App.4th 713, in which the court found that a remote instance of domestic violence was insufficient to support jurisdiction. There, “[t]he physical violence between the parents happened at least two, and probably seven, years before the DCFS filed the petition,” and “[t]here was no evidence that any of the children were physically exposed to the past violence between their parents and no evidence of any ongoing violence between the parents who are now separated.” (*Id.* at p. 717.) The court held that jurisdiction under section 300, subdivision (a) was unwarranted.

The facts here are more like those in *In re R.C.* (2012) 210 Cal.App.4th 930, 944, which involved “two separate acts of domestic violence; repeated threats to kill the mother; a threat to take the children to Mexico; domestic violence in the presence of one of the children; and one of the children, R.C., being afraid of the father.” The court held that the evidence was sufficient to support jurisdiction under section 300, subdivision (b). (*Id.* at p. 943.) Similarly, in *Giovanni F.*, *supra*, the father “was violent with [the mother] throughout their two-and-one-half-year relationship. He hit, slapped and beat her. He blackened her eye, bloodied her nose and choked her. He left her bruised and scarred. He called her demeaning names. He threatened to kill her.” (*Giovanni F.*, *supra*, 184 Cal.App.4th at p. 599.) The violence in that case was more extensive than the violence here, including the father hitting and choking the mother while he was driving, with the child in the car. (*Ibid.*) Nonetheless, ongoing violence like what occurred in this case, *Giovanni F.*, and *In re*

R.C. warrants a finding that the involved children are at risk as a result of the violence.

Mother compares this case to *In re Jonathan B.* (2015) 235 Cal.App.4th 115, in which the mother and the father had one violent conflict in 2009, and separated in 2013. (*Id.* at p. 117.) In 2014, the father had been drinking at a party and the mother, while picking up the children from the party, agreed to give the father a ride home. The father became upset with the mother, and when he got out of the car he began throwing and breaking the mother's belongings. When the mother got out of the car, he punched the mother and slapped her. (*Ibid.*) The mother got back into the car and drove directly to the police station, and the police issued an emergency restraining order. (*Ibid.*) DCFS filed a petition under section 300, subdivisions (a) and (b), alleging that the mother failed to protect the children. The juvenile court sustained the petition. The Court of Appeal reversed, finding that the mother "did not knowingly expose the children to a pattern of domestic violence or actively fight with father." (*Id.* at p. 121.)

Here, by contrast, mother maintained a relationship with father for years despite multiple violent altercations with father, and she did not immediately seek help, as the mother did in *Jonathan B.*³ The years of ongoing violence in this case distinguish it from cases with isolated instances of violence.

³We respectfully disagree with the statement in *Jonathan B.* that "a sustained jurisdictional finding against mother would, in effect, penalize her for having brought the incident to the authorities' attention when, in fact, this is the kind of response that should be encouraged." (*Jonathan B.*, *supra*, 235 Cal.App.4th at p. 121.) Dependency proceedings are not

Mother also asserts that by the time of the hearing, she and the children had moved, a restraining order was in place, and mother was participating in services. Mother argues that therefore, at the time of the jurisdiction hearing, the children were not at risk from father's actions. She correctly notes that "[t]he basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) Previous acts of violence or neglect, "standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur." (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.)

As discussed above, the violent incident that led to DCFS's involvement was part of a years-long history of violent and abusive conduct by father. Although mother's efforts to distance herself from father are highly commendable and were successful as of the time of the hearing, the court was not obligated to ignore evidence of the past violence in mother and father's relationship, the long-term nature of that violence, and its effects on the children. Although it appeared that by the time of the jurisdiction hearing mother was in the process of taking

penalties imposed upon parents. Indeed, our Supreme Court recently held that dependency jurisdiction may be appropriate under section 300, subdivision (b) even "without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child." (*In re R.T.* (2017) 3 Cal.5th 622, 624.) "[T]he dual purpose of dependency proceedings is to protect the welfare of the minor and to safeguard parents' right to properly raise their own child. A petition is brought on behalf of the child, not to punish the parents." (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.)

appropriate steps to protect the children, a parent's conduct involving "remaining in the abusive relationship, and her record of returning to Father despite being abused by him, supports the juvenile court's finding that her conduct in the domestic altercations endangered the children." (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

Mother and father maintained their relationship for three to four years while father was using drugs and being abusive; mother had taken steps to remove herself from the relationship and protect the children for only about six months. It was not unreasonable for the juvenile court to conclude that insufficient time had passed to demonstrate that any risk to the children had been alleviated. Thus, the court's findings that the children were at risk from the long history of serious domestic violence and father's drug use were supported by substantial evidence.

C. Disposition

The court ordered mother to complete a domestic violence support group program for victims, parenting education, individual counseling, and family preservation services. Mother asserts that although the domestic violence program and family counseling were warranted, "there was no need to inundate mother with additional programs such as individual counseling and parenting." Mother asserts that these programs were not supported by the evidence because "[t]here was no evidence mother needed generic counseling or that she lacked parenting skills."

DCFS asserts that mother forfeited any challenge by failing to object to the disposition order below. Mother contends that she did, in essence, assert that a disposition order was unnecessary, because she argued that jurisdiction was inappropriate with

respect to mother. Objecting to jurisdiction is not tantamount to objecting to specific aspects of a dispositional order. “[T]he failure to object to a disposition order *on a specific ground* generally forfeits a parent’s right to pursue that issue on appeal.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345 [italics added].) Here, mother did not challenge the basis for the court’s ruling as to counseling or parenting classes (or any other part of the dispositional order), and therefore her challenge to the dispositional order has been forfeited.

Even if she had not forfeited such a challenge, however, the court’s order was supported by the evidence. A juvenile court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” (§ 362, subd. (a).) “The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion.” (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) The orders must be “designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (§ 362, subd. (d).) The reunification plan must be appropriate for the family, based on the unique facts relating to that family. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.)

The evidence supports the dispositional order. Mother and father maintained a relationship for years despite father’s drug abuse and serious violence against mother. Mother recognized that father’s violence was affecting G.S., and K.S. was born while the violence was ongoing. These facts support a determination that mother could benefit from individual counseling to address the effects of the serious domestic violence she suffered, and

parenting classes to address the parameters of an appropriate environment for raising children.

Mother contends that she is a single parent working full time, and the requirement of attending multiple classes “was a lot for mother to handle without the additional burden of programs that were [not] necessary.” There was no evidence presented in the juvenile court regarding the effect of mother’s work schedule on her ability to complete the dispositional order requirements. If mother’s work schedule warrants a change to the court’s order, such information must be presented to the juvenile court in the first instance.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

MICON, J. *

*Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.